

Introduced by Senator Burton

February 21, 2003

An act to amend Section 39152 of the Health and Safety Code, relating to air quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 871, as introduced, Burton. Air quality: gasoline vapor recovery systems.

(1) Existing law requires, until January 1, 2006, any authorized representative of the State Air Resources Board, an air quality management district, or an air pollution control district, or a designated officer of those entities, if that authorized representative detects a minor violation in the course of conducting an inspection authorized pursuant to the air pollution control laws of the state, to issue a notice to comply prior to leaving the site at which the minor violation is alleged to have occurred, if the authorized representative determines that a notice to comply is warranted.

Existing law authorizes the state board to adopt procedures for determining the compliance of any system designed for the control of gasoline vapor emissions during gasoline marketing operations, including storage and transfer operations, with performance standards that are reasonable and necessary to achieve or maintain any applicable ambient air quality standards. Existing law also requires the state board to adopt additional performance standards that are reasonable and necessary to ensure the systems for the control of gasoline vapors resulting from motor vehicle fueling operations do not cause excessive gasoline liquid spillage or excessive evaporative emissions.

This bill would include as a minor violation, any violation of a requirement imposed on vapor recovery systems on gasoline cargo

tanks, if the violation is the owner or operator's first violation of that nature, the state board determines that the violation is de minimis, and the state board determines that the violation does not pose a threat to the public health or the environment. The additional duties for a district under this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 39152 of the Health and Safety Code is
- 2 amended to read:
- 3 39152. (a) An authorized representative of the state board or
- 4 district or an authorized or designated officer, who, in the course
- 5 of conducting an inspection, detects a minor violation shall issue
- 6 a notice to comply before leaving the site at which the minor
- 7 violation is alleged to have occurred if the authorized
- 8 representative finds that a notice to comply is warranted.
- 9 (b) A person who receives a notice to comply pursuant to
- 10 subdivision (a) shall have the period specified in the notice to
- 11 comply from the date of receipt of the notice to comply in which
- 12 to achieve compliance with the requirement cited on the notice to
- 13 comply. Within five working days of achieving compliance, the
- 14 person who received the notice to comply shall sign the notice to
- 15 comply and return it to the state board's or district's representative
- 16 or an authorized or designated officer, stating that the person has
- 17 complied with the notice to comply. A false statement that
- 18 compliance has been achieved is a violation of this division
- 19 pursuant to Section 42400.2 or 42402.2.



1 (c) A single notice to comply shall be issued for all minor
2 violations cited during the same inspection and the notice to
3 comply shall separately list each cited minor violation and the
4 manner in which each minor violation may be brought into
5 compliance.

6 (d) A notice to comply shall not be issued for any minor
7 violation that is corrected immediately in the presence of the
8 inspector. Immediate compliance in that manner may be noted in
9 the inspection report, but the person shall not be subject to any
10 further action by the state board's or district's representative or an
11 authorized or designated officer.

12 (e) Except as otherwise provided in subdivision (g), a notice to
13 comply shall be the only means by which the state board's or
14 district's representative or an authorized or designated officer shall
15 cite a minor violation. The state board's or district's representative
16 or an authorized or designated officer shall not take any other
17 enforcement action specified in this division to enforce the minor
18 violation against a person who has received a notice to comply if
19 the person is in compliance with this section.

20 (f) If a person who receives a notice to comply pursuant to
21 subdivision (a) disagrees with one or more of the alleged violations
22 cited in the notice to comply, the person shall give written notice
23 of appeal to the state board or district, which shall develop a
24 process for reviewing and determining the disposition of the
25 appeal.

26 (g) Notwithstanding any other provision of this section, if a
27 person fails to comply with a notice to comply within the
28 prescribed period, or if the state board or district or an authorized
29 or designated officer determines that the circumstances
30 surrounding a particular minor violation are such that immediate
31 enforcement is warranted to prevent harm to the public health or
32 safety or to the environment, the state board or district or an
33 authorized or designated officer may take any needed enforcement
34 action authorized by this division.

35 (h) A notice to comply issued to a person pursuant to this
36 section shall contain a statement that the inspected facility may be
37 subject to reinspection at any time. Nothing in this section shall be
38 construed as preventing the reinspection of a facility to ensure
39 compliance or to ensure that minor violations cited in a notice to
40 comply have been corrected.



(i) Nothing in this section shall be construed as preventing the state board or district or an authorized or designated officer, on a case-by-case basis, from requiring a person subject to a notice to comply to submit reasonable and necessary documentation to support a claim of compliance by the person.

(j) Nothing in this section restricts the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law. Furthermore, nothing in this section prevents the state board or district, or any representative of the state board or district, from cooperating with, or participating in, such a proceeding.

(k) Notwithstanding any other provision of this section, if the state board or district or an authorized or designated officer determines that the circumstances surrounding a particular minor violation are such that the assessment of a civil penalty pursuant to this division is warranted or required by federal law, in addition to issuance of a notice to comply, the state board or district or an authorized or designated officer shall assess a civil penalty in accordance with this division, if the state board or district or an authorized or designated officer makes written findings that set forth the basis for the determination of the state board or district.

(l) For the purposes of this section, the term “minor violation” includes a violation of any requirement imposed on a vapor recovery system on a gasoline cargo tank that is subject to the requirements of Article 5 (commencing with Section 41950) of Chapter 3 of Part 4, and any rule or regulation adopted by a district pursuant to that article, if the violation meets all of the following criteria:

(1) Is the owner or operator’s first violation of that nature.

(2) Is determined by the state board to be a de minimis violation.

(3) Is determined by the state board to not pose a threat to the public health or the environment.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for

- 1 reimbursement does not exceed one million dollars (\$1,000,000),
- 2 reimbursement shall be made from the State Mandates Claims
- 3 Fund.

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